



**A TEXT AMENDMENT TO TITLE 9, CHAPTER 7
VACATIONS, DEDICATIONS AND BOUNDARY
ADJUSTMENTS**

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Prepared July 1 for the Planning & Zoning Commission
Public Meeting of July 14, 2011

- APPLICANT:** Teton County Planning Department
- APPLICABLE CODE:** Title 9 Chapter 7 Vacations, Dedications and Boundary Adjustments, Teton County Subdivision Ordinance
- REQUESTS:** Remove Section 9-3-2 (D-3) Plat Changes from Chapter 3 and integrate it into Chapter 7 Vacations, Dedications and Boundary Adjustments. Modify selected parts of the Plat Changes section and transfer it into Section 9-7-1 Application Procedure and Section 9-7-2 Vacation of Plats Procedure. The modifications would better match State vacation statute and recent case law in regard to changing a recorded plat or modifying the documents associated with a recorded subdivision or Planned Unit Development.
- APPLICABILITY:** County wide, all zoning districts

BACKGROUND: Section 9-3-2 (D-3) entitled Plat Changes was added in November 2010. That section was specifically added to the ordinance so that developers of approved and recorded subdivisions might be able to easily reconfigure platted subdivisions and use an expedited review process provided the density or impacts were decreasing. The hope is that developers might want to reconfigure their original project into one that is more sellable while clearly having reduced offsite, onsite or environmental impacts. In cases where the overall number of lots is being reduced, and/or where natural or scenic resources are being better protected, the replatting process is meant to be considerably streamlined.

Why is this amendment being proposed?

In working with some developers, it became apparent that many of the possible changes to an approved project might involve going back and vacating, consolidating, reconfiguring or renumbering approved lots that are recorded on Mylar in the Clerk's Office. Any manner of modifying these recorded plats requires a process and many details of that process are enumerated in the Idaho Code, Title 50, Chapter 13. A "change to a plat" usually involves an amendment to recorded plats or vacating lots, thus subject to Idaho Statutes. Vacations are already addressed in our County Ordinance, Title 9 Chapter 7, which deals with plat vacations, dedications, easements, and boundary adjustments. It is better to place an item of the same topic in one place rather than in two places in the county code.

Why is the Plat Changes section being moved?

Staff believes the Plat Changes section should be incorporated into the Vacations Chapter because it involves changes to recorded land records. In its existing location, it is lumped in with the final plat review process. A different set of procedures applies to changing an approved and

recorded subdivision compared to one still under review. The State prescribes procedures for vacating or partially vacating these recorded instruments.

What substantive changes were made to the amended sections of code?

The Plat Changes section authorized the Planning Administrator to make final decisions about insignificant changes to plats. It was found however, that insignificant changes might involve amending a recorded document or vacating portions of a plat. State Code delegates this authority to the Board of County Commissioners. It is not clear whether the Board can then delegate the decision to the Planning Administrator. Staff believes that changes to a plat, especially ones involving a vacation, need to be approved by the Board. It is not necessary to notify neighbors or make the decision on an insignificant plat change in a public hearing. A public meeting is the anticipated venue that an insignificant change to a plat would be heard and decided upon by the Board.

- 1) A proposed plat change that has been determined to be “Substantial”, but would have a decrease in density or impacts, would be reviewed as a Concept Plan by the Planning Administrator rather than the Planning Commission at their once-per-month public hearing. It is thought that a more streamlined and quicker process should be available for projects that are “downsizing”.
- 2) The Plat Changes section now includes language that specifically calls out the process for lot consolidations. A lot consolidation involves two or more platted, subdivision lots (not metes and bounds tracts) that are being merged. Two lots could be consolidated into one or four lots into one or two, for example. It is not expected that any area outside of the original subject lots would be part of a lot consolidation.
- 3) The Plat Changes section now references the Master Plan and Development Agreement. These documents are recorded and filed with a plat and when changes are made to a plat, related changes may have to be made to these documents.
- 4) The existing code section 9-7-2 City Council Consent Required is not consistent with the Area of City Impact sections of our code. The Area of City Impact statutes came after the “one-mile-from city limits” sections in the State code. There are apparent inconsistencies that have not been rectified in the State code. There have been recent court cases about the decision-making authority of City Councils in areas outside of the city limits. The present County code does not reflect these rulings. The code language now solicits comments and input from the cities when plats are being amended and the property is located within the Area of Impact or within a mile of city limits. The County Attorney’s advice about this code change was sought.

AMENDMENT TO TITLE 9 TETON COUNTY SUBDIVISION ORDINACE

See the attached pages with proposed changes to Chapter 7- Vacations...

CONSISTENCY WITH APPLICABLE POLICIES OF 2004 COMPREHENSIVE PLAN

The 2004 Comprehensive Plan enumerated a vision and set of policies for the County about subject matter that is not directly related to the proposed amendments to the text of the Subdivision Ordinance. The subjects in the Comprehensive Plan list no policies or implementation measures that seem to be related at all to these amendments, which concern themselves with land records, vacating, and amending subdivision plats.

FINDINGS OF FACT TO AMEND THE COUNTY SUBDIVISION ORDINANCE:

Consistent with purposes. The proposed text amendment is consistent with the statements in 9-1-3 Purposes and Scope of Title 9 of the Teton County Subdivision Ordinance.

Consistent with other sections of the Zoning and Subdivision Ordinance. The proposed text amendment is consistent with all other provisions of the Teton County Subdivision and Zoning Ordinances.

Consistent with Idaho State Statute; The proposed amendment changing Chapter 7 would be more in keeping with the Idaho Statutes because insignificant changes to a recorded plat would be approved by the Board of County Commissioners rather than the Planning Administrator. State Statutes do not specify that the Planning Commission needs to make a recommendation to the Board on vacations. When it has been determined that the proposed changes to a subdivision or PUD plat are actually decreasing neighborhood or environmental impacts the plat petition will go directly to the Board after review by the Planning Administrator. These types of plat changes typically involve decreasing or reconfiguring lots and vacating or consolidating smaller platted lots into a larger sized lot.

PLANNING COMMISSION ACTIONS:

- A. APPROVE the text amendment as presented in the application, having provided the reasons and justifications for the approval.
- B. Approve the text amendment with modifications, having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. DENY the text amendment request and provide the reasons and justifications for the denial.
- D. CONTINUE to a future PZC Public Hearing with reasons given as to the continuation or need for additional information.

Staff suggests the following motion:

I recommend **approval** to the Board of County Commissioners of the proposed amendments to the Subdivision Ordinance, as presented in the staff report attachment (*with the following modifications, if any*) and as deliberated upon at this public hearing. Findings of fact have been made that the proposed changes to move and modify the Plat Changes section to Title 9, Chapter 7 is consistent with the purposes and goals of the Comprehensive Plan and with the County Subdivision Ordinance's general goals and purposes statements,

Attachments:

- Title 7 Vacations, Dedications and Boundary Adjustments -proposed
- Idaho Statutes Title 50 -1306A Plats and Vacations

#1
Attachment

Proposed for 7/12/2011 PZC

CHAPTER 7
VACATIONS, DEDICATIONS AND BOUNDARY ADJUSTMENTS (amd. 2011-04-14)

SECTION:

9-7-1: Vacations Of Plats, Easements, Rights-Of-Way; Lot Consolidations
And Amendments To Recorded Subdivisions Documents

9-7-2: Dedication Procedures

9-7-3: Boundary Adjustments (amd. 2011-04-14)

**9-7-1: VACATIONS OF PLATS, EASEMENTS, RIGHTS-OF-WAY; LOT
CONSOLIDATIONS AND AMENDMENTS TO RECORDED SUBDIVISIONS
DOCUMENTS**

A. APPLICATION: In accordance with Idaho State Statutes §§ 50-1301 through 1326, any person, persons, firm, association, corporation or other legally recognized form of business desiring to change or vacate a plat or part thereof, a public right of way, or easement, may petition the County by filing a completed application with the applicable information and required nonrefundable fee at the planning and zoning office of the County. The following steps to apply to vacate or change these recorded property documents are:

1. **Pre-Application Conference:** The applicant shall schedule and meet with the Planning Administrator in a Pre-Application Conference to determine the type and magnitude of any proposed change to an easement, right-of-way, or proposed changes or vacations to a recorded plat.
2. Following the Pre-application meeting the Planning Administrator shall provide the applicant a checklist of the revised drawings, maps, reports or other submittal items that are necessary to review the changes that are proposed. The application shall set forth particular circumstances of the request to vacate; and contain a legal description of the platted area or property to be vacated and the names of the persons affected thereby.
3. The Planning Administrator may commence review of the application only after the applicant has submitted the required items that were identified in the Pre-Application meeting checklist and have paid all fees and demonstrated that all taxes are current.

**B. REVIEW OF PROPOSED CHANGES TO RECORDED PLATS, EASEMENTS,
RIGHTS-OF-WAY, MASTER PLANS, OR DEVELOPMENT AGREEMENTS :**

Any proposed changes to a right-of-way, recorded easement, an approved plat of a subdivision or Planned Unit Development and the accompanying Master Plan, or the recorded Development Agreement shall first be reviewed by the Planning Administrator to determine if the changes are insignificant, substantial- increase, or substantial- decrease in nature. The Planning Administrator has the discretion to schedule meeting time in front of the Commission and/or the Board for an evaluation of the changes. Changes to the previously recorded documents shall be approved or denied pursuant to this subsection.

1. **Purpose and Intent.** The purpose and intent of this Subsection is to provide an efficient procedure for reviewing changes or proposed vacations to previously recorded rights-of way, easements, to recorded plats of subdivisions and Planned Unit Developments or to recorded Development Agreements. It is the further purpose and intent to ensure the revised plats, and Planned Unit Developments or recorded Master Plans comply with all applicable regulations but it is desirable to avoid unnecessary duplication of studies and analyses that may have been required as part of the initial plat application and approval.

The purpose and intent also is to reduce the intrusion of development into sensitive natural areas of the county and reduce governmental costs associated with scattered development by expediting changes to recorded plats that reduce the number of vacant platted lots in the county.

2. **Definitions.** For purposes of this Subsection the following definitions shall apply.

- a. **Insignificant Changes / Vacations.** – The proposed changes to the recorded land records have minimal direct impact on the immediate neighborhood, general vicinity of the subdivision or overall community. These include:
 - i. vacations of portions of a plat, except where platted open space acreage would be reduced in acreage or the value of the protected resource may be diminished.
 - ii. minor amendments to the recorded Master Plan,
 - iii. lot line adjustments between lots within a subdivision,
 - i. lot consolidations of two or more platted lots into fewer lots,
 - ii. the re-arrangement or relocation of five (5) or fewer lots, parcels or buildings that does not encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;
 - iii. a minor boundary adjustment between a lot in a platted subdivision and an adjacent non-platted property,
 - iv. minor changes to the layout of roads, utilities or other facilities;
 - v. other changes of similar magnitude and minimal direct impact.
- b. **Substantial Changes – Increase Scale, Impact.** Substantial Changes – Increase Scale, Impact are changes that increase the scale or scope of the platted subdivision, or increase the direct or indirect impacts on the immediate neighborhood, general vicinity of the subdivision or overall community. These substantial changes may include the following:
 - i. an increase in the number of lots;
 - ii. the re-arrangement or relocation of lots that encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;
 - iii. the relocation of parking facilities, buildings, or other elements of the development that encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property; or
 - iv. other changes of similar magnitude or projected impact.
- c. **Substantial Changes/ Vacations – Decrease Scale, Impact.** Substantial Changes or vacations of a plat, the master plan, or portions of it that substantially decrease the direct or indirect impacts on the immediate neighborhood, general vicinity of the subdivision or overall community. These substantial changes may include the following:
 - i. a reduction in the number of lots or parcels;
 - ii. the re-arrangement or relocation of more than five (5) lots or parcels that does not encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;
 - iii. renegotiation of development agreement;
 - iv. other changes of similar magnitude or reduction of impacts.

3. **Criteria for Approval** Applications to vacate or make changes to recorded rights-of-way, easements, recorded plats, or master plans shall be reviewed using the following Criteria for Approval.

i. Insignificant Changes.

- a. Any proposed changes to an easement, public right-of-way, or Planned Unit Development, shall comply with all applicable criteria and standards of the county regulations, conditions of approval established in the previous approval, and the development agreement approved as part of the previous approval.
- b. Insignificant changes to a recorded plat or master plan shall not reduce the area of designated open space or increase the number of lots or the overall amount of area of development.
- c. Insignificant changes to a recorded plat, master plan, easement, or right-of-way shall not increase or create new and potentially substantial direct or indirect impacts on the neighborhood, vicinity of the subdivision or overall community.

ii. Substantial Changes – Increase Scale, Impact

- a. The master plan and plat for a subdivision or Planned Unit Development, including the proposed changes, shall comply with all applicable criteria and standards of the current county regulations.
- b. Any proposed changes to a recorded plat or master plan that increase direct or indirect impacts may require additional mitigation pursuant to the criteria and standards of county regulations.

iii. Substantial Changes – Decrease Scale, Impact.

- a. The applicant shall submit to the Planning Administrator revised maps showing the proposed vacation or revisions to the layout of lots or buildings and any reduction in the number of lots or buildings. The project's Development Agreement may require adjustments in order to reflect the substantial changes being proposed. This revised layout shall be accompanied by the maps and analyses that were submitted as part of the previous application and approval. These maps and analyses include the following to the extent they were required for the previous approval:

1. Existing Conditions Inventory and Existing Conditions Map;
2. Existing Contour Map;
3. Maps of Overlay Areas as established in Title 8 and Title 9;

4. Land Management Plan and/or Open Space Management Plan
 5. Fiscal and Services Analysis;
 6. Natural Resource Analysis; and,
 7. Traffic Impact Study.
 8. Approved Development Agreement
- b. No additional studies or analyses are required.
 - c. No additional application fees are required.
 - d. The master plan and plat for subdivision or Planned Unit Development, including the proposed changes, shall reduce governmental costs for operations and capital expenses. The applicant shall provide financial surety of 125% of a current engineer's cost estimate for infrastructure OR the development agreement shall require no lot sales in the improved amended plat until such time as infrastructure is complete or financial surety has been provided. As applicable, shall reduce the intrusion of development into natural resource areas that are protected by criteria in county regulations or reduce development in the Overlay Areas as these areas are defined in Title 8 or Title 9.

2) Proposed vacations or changes of a recorded easement, right-of-way, or to an approved plat for a subdivision or Planned Unit Development, or a Development Agreement shall be reviewed pursuant to the following procedures.

i. **Insignificant Changes.** Upon determining the application complete, and that the proposal is an insignificant change or vacation, the Planning Administrator shall recommend to the Board of County Commissioners approval, approval with conditions, or denial the application pursuant to the criteria and standards in the county regulations. The Board may review insignificant changes at a regularly scheduled public meeting.

ii. **Substantial Changes – Increase Scale, Impact.** Upon the Planning Administrator determining the application complete, and that the proposed changes are substantial, the application shall be reviewed as a revised Preliminary Plat and revised Final Plat pursuant to the procedures established for such applications. The Planning Administrator shall schedule the application for review by the Planning and Zoning Commission and Board of County Commissioners pursuant to the procedures established in this regulation for Preliminary and Final Plats.

iii. **Substantial Changes – Decrease Scale, Impact.** Upon the Planning Administrator determining the application complete, and that the proposed changes will decrease the scale or impacts of the development, the application shall be reviewed by the following procedure.

a. **Concept Review by Planning Administrator.** The application for proposed changes shall be reviewed by the Planning Administrator as a Concept Plan. The Administrator shall recommend approval, approval with conditions or denial to the Board.

b. **Final Plat by County Commission.** Upon receiving a recommendation from the Planning Administrator, the Board shall review the application at a legally noticed public hearing. A Final Plat application shall be submitted pursuant to Title 50 of the Idaho Code and Title 9, and shall be accompanied with a revised Development Agreement and/or Conditions, Covenants and Restrictions (CCR) as such revisions may be necessary to implement the Final Plat. The Board shall approve, approve with conditions or deny the proposed Master Plan, Final Plat and/or Development Agreement pursuant to the criteria set forth in C-iii-d of this section.

iv. **Public Hearings and Public Notice.** The scheduling, public notice and conduct of public hearings as required in this Subsection shall comply with the standard procedures established in county regulations and the Idaho Code §§ 50-1301 through 1326.

C. CITY COUNCIL CONSENT REQUIRED: A solicitation for official comment shall be conveyed to the city council of the affected city before granting any vacation by the Board of County Commissioners when the easement, right-of way, platted area, or any part thereof lies:

- a. Within the officially delineated Area of City Impact or within one mile of City limits,
- b. Outside one mile of the city limits but adjacent to a platted area within one mile of the city.

D. NOTICE OF HEARING: Written notice of public hearing on the application shall be given by U.S. Postal Service mailing, with a certification of mailing, at least ten days prior to the date of public hearing to all property owners within 300 feet, at the applicant's expense. Such notice of public hearing shall also be published once a week for two successive weeks in the official newspaper of the city, the last of which shall not be less than seven days prior to the date of said hearing; at the applicant's expense, in accordance with Idaho Code Title 50, Chapter 13, or as amended. (Amd. 09-22-2003)

E. BOARD OF COUNTY COMMISSIONERS ACTION: After a public hearing, the Board of County Commissioners may approve, approve with conditions or deny the request for vacation, easement, or dedication as they deem necessary in the public interest.

F. DEED: Whenever public rights of way or public lands are vacated, the Board of County Commissioners shall provide adjacent property owners with a quitclaim deed for vacated property. (Title 9 as amd. through 9-25-2000)

G. CEMETERY PLAT: In the case of a vacation of a cemetery plat where there has no interment or in the case of a cemetery being within three hundred feet (300') of another plat for

which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

H. EASEMENTS: In the case of easements granted for gas, sewer water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon recording of the new or amended plat; provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

I. HIGHWAY DISTRICT: When public streets or public rights of way are located within the boundary of a highway districts, the highway district commissioners shall assume the authority to vacate comparable to the county commissioner or city council as appropriate.

J. PUBLIC HIGHWAY AGENCIES: Public highway agencies acquiring real property within a platted subdivision or highway right of way purposed shall be exempt from the provisions of this section.

K. LAND EXCLUSIVE OF PUBLIC RIGHT OF WAY: Land exclusive of a public right of way that has been subdivided and platted in accordance with Idaho Code chapter 50 need not be vacated in order to be replatted.

L. FEES: Fees shall be in accordance with the published fee schedule.

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TITLE 50 MUNICIPAL CORPORATIONS

CHAPTER 13 PLATS AND VACATIONS

50-1306A. VACATION OF PLATS -- PROCEDURE. (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city must petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in subsection (4) of this section.

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

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